2

No. 06-322

Supreme Court, U.S.
FILED
SEP 25 2006
OFFICE OF THE CLERK

In The

Supreme Court of the United States

RONALD W. MORTERS,

Petitioner,

v.

AIKEN & SCOPTUR, S.C., TIMOTHY J. AIKEN, PAUL J. SCOPTUR AND KELLY I. CENTOFANTI,

Respondents.

On Petition For Writ Of Certiorari To The Wisconsin Court Of Appeals, District I

SUPPLEMENTAL BRIEF UNDER RULE 15.8

LEONARD W. SCHULZ
Counsel of Record
W230 S8775 Clark Street
P.O. Box 238
Big Bend, Wisconsin 53103
(262) 662-3100
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii-iii

SUPPLEMENTAL ARGUMENT 1-9

I. THE CIRCUIT COURT'S DELAY IN RETURNING MR. MORTERS' DEPOSIT FOR APPELLATE COSTS AND FEES FURTHER EXEMPLIFIES THE VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW BY THE WISCONSIN COURTS 1-9

A. Introduction 1

B. Relevant Facts 1-5

C. Discussion 5-9

CONCLUSION 9-10

TABLE OF CONTENTS FOR SUPPLEMENTAL APPENDIX i

SUPPLEMENTAL APPENDIX A1-J2

TABLE OF AUTHORITIES

Page

CASES:

Fullerton Lumber Co. v. Torborg, 274 Wis. 478, 80 N.W. 2d 461 (1957) 6

Lister v. Board of Regents, 72 Wis. 2d 282, 240 N.W. 2d 610 (1976) 6

Morters v. Aiken & Scoptur, S.C., 2006 WI App. 46, 289 Wis. 2d 833, 712 N.W. 2d 71 (Ct. App., 2006) 2, 5

Nebbia v. People of New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934) 8

State ex rel. J. H. Findorff v. Circuit Court for Milwaukee County, 2000 WI 30, 233 Wis. 2d 428, 608 N.W. 2d 679 (2000) 6

State ex rel. Reynolds v. Briedenbach, 205 Wis. 483, 237 N.W. 2d 81 (1931) 6

Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed. 2d 935 (1974) 8

OTHER AUTHORITIES:

United States Constitution, Amendment XIV 1, 8, 9, 10

United States Supreme Court Rule 15.8 1

Wisconsin Constitution, Article I, Sec. 1 1

Wisconsin Supreme Court Order No. 03-06, dated March 31, 2005 iii

WISCONSIN STATUTES:

Sec. 806.07 3

Sec. 808.07(1) 2

TABLE OF AUTHORITIES – Continued

Page

Sec. 808.07(2) 2

Sec. 808.08(1) 5, 6, 7, 8

Sec. 808.09 ..... 5, 8

Sec. 809.26 ..... 3, 5, 8

Sec. 809.26(1) 3

Sec. 814.025 (repealed effective July 1, 2005)* 1

* Effective July 1, 2005, Sec. 814.025 was repealed and former Sec. 802.05 was repealed and recreated by the Wisconsin Supreme Court pursuant to Order No. 03-06.

SUPPLEMENTAL ARGUMENT

I. THE CIRCUIT COURT'S DELAY IN RETURNING MR. MORTERS' DEPOSIT FOR APPELLATE COSTS AND FEES FURTHER EXEMPLIFIES THE VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW BY THE WISCONSIN COURTS.

A. Introduction

In his Petition for Certiorari which was filed on August 31, 2006 and is designated as No. 06-322, Ronald W. Morters argued that the Wisconsin Court of Appeals' failure to remand the appellate frivolity matter for reconsideration as to whether Aiken & Scoptur's appellate fee request violated Wisconsin Statutes, Sec. 814.025, and the Wisconsin Supreme Court's failure to rectify this error violated his rights to due process of law and equal protection of law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Sec. 1, of the Wisconsin Constitution. Mr. Morters' discussion in Argument Section D of his Petition has demonstrated that this violation of his constitutional rights is consistent with the pattern of discrimination which he has faced throughout the litigation against his former attorneys. Recent events in this case further underscore such discriminatory treatment, and Mr. Morters now files this Supplemental Brief pursuant to Rule 15.8 to make the Court aware of such developments.

B. Relevant Facts

As discussed in his Petition for Certiorari, the Milwaukee County Circuit Court assessed the sum of $10,123.09 against Mr. Morters for trial court frivolity costs and fees and $17,820.02 against him for appellate frivolity costs and fees. (See Petition for Certiorari, p. 8)

Judgment for these assessments was entered on February 3, 2005. (App. D1-2)[1] Trial court fee assessments were also made against two attorneys who represented Mr. Morters during the trial court proceedings. (App. D1-2) On March 10, 2005, Mr. Morters appealed from the assessment judgment against him.

Shortly before his appellate brief was due, Mr. Morters received an order to appear for supplementary proceeds from Aiken & Scoptur's attorney and was advised that he could avoid such appearance by paying the sum of $29,284.37 to satisfy the judgment or by filing an appellate undertaking in that amount. In accordance with Sec. 808.07(1), an appeal does not stay the enforcement or execution of a judgment in Wisconsin. Sec. 808.07(2) allows the trial court to stay the execution of the judgment and condition such relief upon the filing of an appellate undertaking. Mr. Morters decided to file an undertaking. After the parties were unable to agree as to the amount and terms of the undertaking, Judge Richard J. Sankovitz ordered that a deposit in the amount of $29,596.83 be made with the Milwaukee County Clerk of Courts. (S. App. A1)[2] Such amount represented the judgment against Mr. Morters which totaled $27,943.11 plus interest in the amount of $1,653.72. Mr. Morters made the required deposit on June 27, 2005.

In its February 14, 2006 decision in *Morters v. Aiken & Scoptur, S.C.*, 2006 WI App. 46, par. 1, 15 & 22, 289 Wis. 2d 833, 712 N.W. 2d 71 (Ct. App. 2006), the Court of Appeals reversed the portion of the judgment related to appellate costs and fees and affirmed the part with respect to the trial court assessment. (See Petition for Certiorari,

---

[1] These appendix references refer to the Appendix to Mr. Morters' Petition for Certiorari.

[2] These appendix references refer to the Supplemental Appendix which accompanies this Brief and are designated "S. App.".

p. 9-11, and App. A1-11) Petitions for review and cross-review were denied by the Wisconsin Supreme Court in its June 14, 2006 order. (App. G1-2) Pursuant to Sec. 809.26, the record and mandate of the Court of Appeals were returned to the Circuit by a remittitur dated June 19, 2006.[3] (S. App. B1-2)

Following remittitur, the trial court entered an order on June 23, 2006 requiring Aiken & Scoptur to submit an amended order for judgment excluding any fees related to the appellate proceedings. (S. App. C1) Such order, however, made no reference to the return of the portion of the deposit with respect to appellate costs and fees. (S. App. C1) In a letter dated July 6, 2006, Aiken & Scoptur's attorney, Paul R. Erickson, proposed calculations for the judgment amount and submitted an amended order for judgment. (S. App. D1-3, E1-2) No provision was included with respect to the return of the appellate deposit. (S. App. E1-2)

In his letter of July 11, 2006 to the Court, Mr. Morters agreed with the calculation of the reduced amount of the judgment but objected to the disbursement of any trial court costs and fees to Aiken & Scoptur as he believed their previous request for appellate court fees had constituted a fraud upon the Court and rendered their hands unclean. Mr. Morters was contemplating the filing of a motion for relief from the trial court fees pursuant to Sec. 806.07 but ultimately decided to wait until a revised judgment had been entered.

In an attempt to obtain the return of the appellate deposit, Mr. Morters contacted Judge Sankovitz' court by telephone on July 28, 2006 and learned that he was on vacation. He was advised by Judge Sankovitz' clerk in a

---

[3] If a petition for review is filed with the Wisconsin Supreme Court, Sec. 809.26(1) provides that transmittal of the remittitur is stayed until the Supreme Court rules on the petition for review.

subsequent telephone call on August 16, 2006 that the Judge *was working on the matter*. Mr. Morters also wrote directly to the Clerk of Courts on August 14, 2006 requesting the return of said funds. Ronald was then advised by Amy Fox from the Clerk's accounting office that no disbursement could be made without authorization by Judge Sankovitz, and that he was working on it.

By his letter of August 25, 2006, Aiken & Scoptur's attorney requested the Court to sign the amended order for judgment. He also acknowledged that Aiken & Scoptur had no right to require that the deposit covering appellate fees be held. In an order entered on August 29, 2006, Judge Sankovitz overruled Mr. Morters' objection to the proposed judgment with no stated reason. (S. App. F1-2) The Court then executed the amended order for judgment. (S. App. G1-2) No provision for the return of the portion of the deposit covering the appellate fees was included in either the August 29, 2006 order or the amended order for judgment. (S. App. F1-2, G1-2)

On August 31, 2006, Mr. Morters' Petition for Certiorari was filed with the United States Supreme Court. Mr. Morters advised the Court on page 11 of the Petition that the portion of his deposit relating to the appellate fees had not yet been returned by the trial court. On September 5, 2006, Aiken & Scoptur's attorney forwarded an amended judgment to the Judgment Clerk for execution and filing. (S. App. H1-2) No provision was made for the return of the appellate deposit.[4] (S. App. H1-2)

Greatly concerned that the trial court would continue to withhold the appellate fee deposit, Mr. Morters filed a petition for supervisory writ with the Court of Appeals on September 15, 2006 seeking a writ to compel the trial

---

[4] Ronald subsequently learned that such judgment was executed on September 7, 2006.

court to return the appellate deposit. (S. App. J1-2) Subsequently, Mr. Morters received by mail a copy of an order releasing the funds dated September 13, 2006 together with a check in the amount of $18,924.35 returning the appellate deposit. (S. App. I1-2) The disbursement order, however, failed to acknowledge that the trial court had been reversed and that such release was pursuant to the mandate of the Court of Appeals. (S. App. I1-2)

C. Discussion

By virtue of the Court of Appeals' February 14, 2006 decision reversing the appellate fee assessment, Mr. Morters had a clear legal right to the return of the portion of his deposit covering appellate fees. *Morters*, 2006 WI App. 46 at par. 1 & 15. (App. A3 & 8) Following the Wisconsin Supreme Court's denial of review on June 14, 2006, the Court of Appeals transmitted its remittitur to the Circuit Court pursuant to Sec. 809.26. Such remittitur included the decision of the Court of Appeals and the Court's mandate reversing the portion of the judgment related to appellate costs and fees awarded to Aiken & Scoptur. (S. App. B1-2) Upon the issuance of remittitur, clear statutory law required the trial court to immediately return Mr. Morters' appellate deposit.

When the trial court received the remittitur, Secs. 808.08(1) and Sec. 808.09 imposed a plain and positive duty upon the Court to comply with the mandate of the Court of Appeals. Pursuant to Sec. 808.09, the appellate court shall remit its decision to the court below and " . . . thereupon the court below shall proceed in accordance with the judgment or decision." When the record and remittitur are received in the trial court, Sec. 808.08(1) imposes the following duty:

> "If the trial judge is ordered to take a specific action, *the judge shall do so as soon as possible*." [Emphasis added.]

The statute recognizes that prolonged delay by the trial judge increases the harm to the aggrieved party.

A specific action under Sec. 808.08(1) is a ministerial duty that requires no exercise of discretion by the trial court. See *State ex rel. J. H. Findorff v. Circuit Court for Milwaukee County*, 2000 WI 30 at par. 20, 233 Wis. 2d 428, 608 N.W. 2d 679 (2000). In discussing the definition of ministerial duty, the Court in *Findorff* noted as follows:

> "We find the definition of a public officer's ministerial duties useful in this context also. Ministerial duties are those that are 'absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.'"
>
> *Findorff*, 2000 WI 30 at par. 20 citing *Lister v. Board of Regents*, 72 Wis. 2d 282, 301, 240 N.W. 2d 610 (1976).

The return of the appellate deposit herein falls within the category of ministerial duty. It is a specific nondiscretionary action mandated by the decision of the Court of Appeals. There was no legal reason for the deposit to have been required initially, and certainly there was no legal reason for the return of such deposit to have been delayed.

Wisconsin case law has strongly emphasized the duty of the lower courts to comply with the mandate of the appellate court. According to *Fullerton Lumber Co. v. Torborg*, 274 Wis. 478, 483, 80 N.W. 2d 461 (1957) when the appellate mandate directs the entry of a particular judgment, the trial court has a duty to proceed as directed. In *State ex rel. Reynolds v. Breidenbach*, 205 Wis. 483, 485, 237 N.W. 81 (1931), the Supreme Court indicated that it is the duty of the trial court to enter judgment in accordance with the mandate. Wisconsin statutory and case law imposes a clear duty on the trial court to comply with the mandate of the appellate court.

As the facts outlined in this Brief have demonstrated, the trial court was presented with numerous opportunities to order the return of the appellate deposit. In its June 23, 2006 order, the Court should have included a provision directing the Clerk of Courts to immediately return the portion of the deposit related to appellate costs and fees. Instead, Judge Sankovitz appeared to have ignored the deposit return issue. (S. App. C1) Such inaction runs contrary to the trial court's duty under Sec. 808.08(1) to act as soon as possible in compliance with the decision of the Court of Appeals.

Following the receipt of the proposed amended order for judgment from Aiken & Scoptur in early July, the Court should have recognized that it was correct but incomplete because the deposit issue was not covered. (S. App. E1-2) Aiken & Scoptur should have been required to submit a complete order disposing of the entire matter. Furthermore, as an officer of the court, it was incumbent upon Aiken & Scoptur's attorney to submit a complete order. Mr. Morters' telephone inquiry should also have prompted the Court to act.

As part of its August 29, 2006 order directing the entry of the judgment proposed by Aiken & Scoptur, Judge Sankovitz could have included a provision releasing the deposit. (S. App. F1-2) When executing the amended order for judgment on August 29, 2006, the Court could have inserted a clause dealing with the refund of the appellate deposit. (S. App. G1-2) Mr. Morters highly suspects that the trial court was prompted to comply with the mandate of the Court of Appeals due to the filing of his Petition for Certiorari on August 31, 2006.

By delaying the return of Mr. Morters' appellate deposit, the trial court failed to follow established remittitur procedure, violated its duty to comply with the appellate mandate, and showed a lack of respect for the Court of Appeals' decision. The fact that the trial court failed to

recite in the disbursement order that the appellate deposit was being released pursuant to the decision and mandate of the Court of Appeals further demonstrates a lack of respect for the appellate mandate. (S. App. I1-2)

Citing *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974) and *Nebbia v. People of New York*, 291 U.S. 502, 537, 54 S. Ct. 505, 78 L. Ed. 940 (1934), Mr. Morters stated on page 13 of his Petition for Certiorari that due process of law protects against arbitrary action. Unreasonable delay in complying with an appellate mandate is patently arbitrary. As further discussed on page 13 of his Petition, the Due Process and Equal Protection Clauses of the Fourteenth Amendment protect persons from invidious discriminations. The trial court's immediate concern with revising the judgment favoring Aiken & Scoptur while ignoring the return of Mr. Morters' appellate deposit serves as yet another example of the bias which Mr. Morters has faced throughout this litigation. Once again, the trial court was concerned with protecting attorneys who had previously violated their former client's instructions and subsequently made a baseless appellate fee request, while ignoring Mr. Morters' rights.

On pages 27 and 28 of his Petition for Certiorari, Mr. Morters discussed how laws which are nondiscriminatory on their face may be applied in such a way as to violate the Equal Protection Clause. By virtue of Secs. 809.26, 808.08(1), and 808.09, Wisconsin created a facially neutral system dealing with remittitur and compliance with an appellate mandate. In this instance, compliance with the Court of Appeals' decision and mandate amounted to a ministerial duty involving the revision of the judgment in favor of Aiken & Scoptur and the return of Mr. Morters' appellate deposit.

The remittitur procedure, however, was not applied in an impartial fashion by the trial court. While the trial court acted immediately to comply with the statutes and

the appellate mandate with respect to Aiken & Scoptur, it failed to do so in a timely fashion regarding Mr. Morters. Because of the inordinate delay in returning the appellate deposit, Mr. Morters finally felt compelled to seek supervisory relief in the Court of Appeals. The trial court's behavior does not constitute impartial application of the law but is unfortunately consistent with the discriminatory treatment and arbitrary behavior described in Mr. Morters' Petition for Certiorari. Throughout this prolonged and stressful litigation that began in 1995, Mr. Morters has had to fight both the adversary and imperfections in a system of justice which is supposed to be impartial.

As noted on page 28 of his Petition for Certiorari, this case has become *sui generis* due to the continuous disregard of Fourteenth Amendment rights by the Wisconsin courts. When due process of law and equal protection of law are not respected at all levels of the court system, such violations proliferate and occur even in conjunction with the performance of basic ministerial duties as seen following the remittitur in this case. For the United States Constitution to survive, the rights guaranteed by it must be respected and enforced by all of the State and Federal courts in this Nation.

CONCLUSION

The events following remittitur presented in this Supplemental Brief further underscore the need for the United States Supreme Court to protect Fourteenth Amendment rights to due process of law and equal protection of law by granting certiorari. If the State courts fail to perform their Constitutional duties to protect these rights, who is left to guarantee these rights for the people of the United States? As the ultimate guardian of the Constitution, the United States Supreme Court must necessarily act.

By declining to rectify the Court of Appeals inexplicable failure to remand Aiken & Scoptur's appellate for request for frivolity consideration, the Wisconsin Supreme Court has approved a deprivation of Mr. Morters' Fourteenth Amendment rights to due process of law and equal protection under the law. Such deprivation cannot be allowed to stand. For the reasons recited in his Petition for Writ of Certiorari and in this Supplemental Brief, Ronald W. Morters' Petition for Writ of Certiorari should be granted and it is respectfully requested that the Court grant the same.

Dated at Big Bend, Wisconsin, this 25th day of September, 2006.

Respectfully submitted,

LEONARD W. SCHULZ
Counsel of Record
Wisconsin State Bar
No. 01009922
W230 S8775 Clark Street
P.O. Box 238
Big Bend, Wisconsin 53103
Telephone: (262) 662-3100

Attorney for Petitioner,
Ronald W. Morters

TABLE OF CONTENTS
FOR SUPPLEMENTAL APPENDIX

Page

Order Requiring Appellate Deposit dated June 22, 2005 ..... A1

Remittitur from Wisconsin Court of Appeals dated June 19, 2006 ..... B1-2

Order Following Remittitur dated June 23, 2006 ..... C1

Letter from Attorney Paul R. Erickson dated July 6, 2006 ..... D1-3

Proposed Amended Order for Judgment E1-2

Order Overruling Objection dated August 29, 2006 ..... F1-2

Amended Order for Judgment dated August 29, 2006 ..... G1-2

Proposed Amended Judgment H1-2

Order for Disbursement dated September 13, 2006 ..... I1-2

Wisconsin Court of Appeals' Acknowledgment of Filing of Ronald W. Morters' Petition for Supervisory Writ J1-2

SUPPLEMENTAL APPENDIX A

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD W. MORTERS,

Plaintiff,

vs.

AIKEN & SCOPTUR, et al.,

Defendants.

ORDER

Case No. 01CV004476

This case came before the court on the plaintiff's request for the approval of an undertaking pursuant to WIS. STAT. § 808.07 that would stay the execution of the judgment against him.

For the reasons stated on the record at today's hearing, IT IS HEREBY ORDERED THAT:

1. On or before July 5, 2005, the plaintiff shall deposit with the clerk of court as an undertaking pending appeal the sum of $29,596.83.

2. For every day that passes after today's date, including the date of deposit, the sum stated in paragraph 1 shall be increased at the rate of $9.19 per day.

[SEAL]

/s/ Richard J. Sankovitz
Richard J. Sankovitz
Circuit Court Judge

Dated: JUN 22, 2005

SUPPLEMENTAL APPENDIX B

WISCONSIN COURT OF APPEALS
OFFICE OF THE CLERK
110 East Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

[SEAL]

Cornelia G. Clark, Clerk

Telephone: (608) 266-1880
TTY: 1-800-947-3529
Fax: (608) 267-0640
www.wicourts.gov

RONALD W. MORTERS
2755 MINOT LANE
WAUKESHA, WI 53188

Ronald W. Morters,
Plaintiff-Appellant,
v.
Aiken & Scoptur, S.C.,
Timothy J. Aiken,
Paul J. Scoptur and
Kelly I. Centofanti,
Defendants-Respondents.

Date: June 19, 2006

District: 1
Appeal No. 2005AP000703
Circuit Court Case No.
2001CV004476

Remittitur

This cause was an appeal to review the order(s) of the Circuit Court of Milwaukee County.

IT IS ORDERED AND ADJUDGED by this court in an opinion filed on February 14, 2006, that:

Judgment reversed in part and affirmed in part.

Panel: Hon. Curley
Hon. Fine
Hon. Wedemeyer

Hon. Ted. E. Wedemeyer wrote the decision/opinion, 9 pages.

With costs taxed against Appellant in the sum of $104.70 by the Court of Appeals.

The appeal record is hereby returned to the Clerk of Circuit Court for Milwaukee County.

I certify that the above is a correct transcript of the original order and judgment of the court in the above cause.

SUPPLEMENTAL APPENDIX C

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD W. MORTERS, et al.

Plaintiffs,

vs.

AIKEN & SCOPTUR, et al.,

Defendants.

ORDER
Case No. 01CV004476

(Filed Jun. 23, 2006)

This case comes before the court upon the remittitur from the court of appeals filed on June 22, 2006.

For the reasons stated in the decision of the court of appeals dated February 14, 2006, IT IS HEREBY ORDERED THAT:

1. On or before July 24, 2006, the defendants may submit an amended order for judgment excluding any fees incurred in connection with the appellate proceedings related to this case.

2. The order shall be submitted under the five-day rule.

[SEAL]

/s/ Richard J. Sankovitz
Richard J. Sankovitz
Circuit Court Judge

Dated: 6-23-2006

SUPPLEMENTAL APPENDIX D

Gutglass
Erickson
Bonville & Larson[S.C.]

LAW OFFICES

PAUL R. ERICKSON
paul.erickson@gebsc.com
writer's direct: 414-908-0230

Board Certified Trial Attorney by the National Board of Trial Advocacy

July 6, 2006

Honorable Richard J. Sankovitz
Milwaukee County Circuit Court
901 North Ninth Street
Milwaukee, WI 53233

RE: Ronald Morters v. Aiken & Scoptur, S.C., et al.
Case No. 01-CV-4476
Our File No. 701.09

Dear Judge Sankovitz:

Pursuant to your order, enclosed is a revised Order for Judgment. I am also enclosing a spreadsheet that was submitted to you with the original order for judgment allocating the various costs and fees. Pursuant to the mandate of the court of appeals, the fees and costs from the date of the Notice of Appeal (5/17/03 through the Remitittur [sic], August 8, 2004) should be excluded.

Originally, our fees on appeal (the first appeal) were $18,722.50 reduced by 25% ($2,044.50) per your decision. The net figure is $16,678.00 in fees. Together with the appellate costs of $1,142.02 the net reduction in the judgment is $17,820.02. The result of the court of appeals decision was to reduce the original judgment by 64%. As the court may recall, Mr. Morters was ordered to pay the

judgment into the clerk of court's offices. Interest at 12% had accrued through the date of deposit. The amount of the deposit was $29,596.83 and the amount of interest deposited (the amount over and above the judgment) was $1,653.72, 64% of that amount is $1,058.38. The balance of the interest (36%) is $595.34. Neither party taxed costs in the court of appeals. The supreme court assessed $50.00 costs for the petition for review and cross-petition which wash each other out.

Based on the above the revised judgment amount is $10,123.09 and accrued interest prior to the deposit with the clerk of courts is $595.34. I have included a provision in the order allowing the clerk of courts to pay out to the defendants $10,718.43. Additionally, I would ask that 36% of accrued interest, if any, while the funds were held with the clerk of courts be paid out to defendants as well.

Please do not hesitate to contact me if further information is required. By copy of this letter to Mr. Morters, I am alerting him to the fact that this order is being submitted under the 5-day rule. Should you hear no objection from Mr. Morters within that time frame I would ask that, if you find the order acceptable, you sign the original and ask your clerk to return a conformed copy in the envelope provided for her convenience.

Very truly yours,

/s/ Paul R. Erickson
Paul R. Erickson

PRE/sad

Enclosure

cc: Ronald Morters (w/encl.)
Tim Aiken (w/encl.)
Brian Anderson (#00-00048) (w/encl.)

SUPPLEMENTAL APPENDIX E

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD MORTERS,

Plaintiff,

v.

AIKEN & SCOPTUR, S.C.,
TIMOTHY J. AIKEN,
PAUL J. SCOPTUR,
KELLY I. CENTOFANTI,

Defendants.

Case No. 01-CV-004476

AMENDED ORDER FOR JUDGMENT

The above-captioned matter having been remanded to the court per the decision of the court of appeals dated, February 14, 2006 with instructions to reduce the judgment against the plaintiff, Ronald Morters, by the amounts previously assessed for attorneys fees incurred by defendants upon the appeal of Judge White's decision. IT IS HEREBY ORDERED:

1. The judgment against Ronald Morters shall be amended to order payment to defendants of $10,123.09 in fees and costs, and

2. The clerk of courts is further ordered to pay to the defendants out of the funds deposited by Mr. Morters, the amount of the amended judgment together with interest through June 27, 2005 of $595.34, and

3. 36% of any interest, that has accrued since June 27, 2005.

Dated at Milwaukee, Wisconsin this ___ day of July, 2006.

BY THE COURT:

Honorable Richard J. Sankovitz
Circuit Court Judge Presiding

SUPPLEMENTAL APPENDIX F

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD W. MORTERS, et al.,

Plaintiffs,

vs.

AIKEN & SCOPTUR, et al.,

Defendants.

ORDER

Case No. 01-CV-004476

(Filed Aug. 29, 2006)

This case comes before the court upon the defendants' request for entry of a proposed order for judgment. On July 13, 2006, Mr. Morters filed an objection. He stated that he agreed with the calculations performed by the defendants, and I infer from that statement his agreement to the amount of the judgment that the defendants seek. Mr. Morters also stated that he intended to "submit a motion for relief from the trial court fees pursuant to Sec. 806.07 and a motion for frivolity assessment against them related to their improper request for appellate fees." However, no such motion has been filed, and more than a month has now passed.

Accordingly, IT IS HEREBY ORDERED THAT:

1. The objection to the proposed judgment is overruled.

2. The court will enter the judgment proposed by the defendants.

S. App. F2

/s/ Richard J. Sankovitz
Richard J. Sankovitz
Circuit Court Judge

Dated: AUG. 29 2006

SUPPLEMENTAL APPENDIX G

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD MORTERS,

Plaintiff,

v.

AIKEN & SCOPTUR, S.C., TIMOTHY J. AIKEN, PAUL J. SCOPTUR, KELLY I. CONTOFANTI,

Case No. 01-CV-004476

Defendants.

AMENDED ORDER FOR JUDGMENT

(Filed Aug. 29, 2006)

The above-captioned matter having been remanded to the court per the decision of the court of appeals dated, February 14, 2006 with instructions to reduce the judgment against the plaintiff, Ronald Morters, by the amounts previously assessed for attorneys fees incurred by defendants upon the appeal of Judge White's decision. IT IS HEREBY ORDERED:

1. The judgment against Ronald Morters shall be amended to order payment to defendants of $10,123.09 in fees and costs, and

2. The clerk of courts is further ordered to pay to the defendants out of the funds deposited by Mr. Morters, the amount of the amended judgment together with interest through June 27, 2005 of $595.34, and

3. 36% of any interest that has accrued since June 27, 2005.

Dated at Milwaukee, Wisconsin this 29th day of ~~July~~ August, 2006.

BY THE COURT:

/s/ Richard J. Sankovitz

[SEAL] Honorable Richard J. Sankovitz
Circuit Court Judge Presiding

SUPPLEMENTAL APPENDIX H

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD MORTERS,

Plaintiff,

v.

AIKEN & SCOPTUR, S.C.,
TIMOTHY J. AIKEN,
PAUL J. SCOPTUR,
KELLY L. CENTOFANTI,

Defendants.

Case No. 01-CV-004476

AMENDED JUDGMENT

A judgment in the above-entitled matter was entered previously on February 3, 2005. The matter having come before the Honorable Richard Sankovitz on remand from the court of appeals and the court having executed an Order for Amended Judgment of the Court dated August 29th, 2006, a copy of which is attached hereto;

IT IS HEREBY ADJUDGED AND DECREED:

The defendants, Aiken & Scoptur, Timothy J. Aiken, Paul J. Scoptur and Kelly L. Centofanti, 260 East Highland Avenue, #700, Milwaukee, Wisconsin 53202, and against the plaintiff, Ronald Morters, 2755 Minot, Waukesha Wisconsin 53188, with taxable costs and disbursements in the amount of $10,123.09 together with 36% of any interest accrued on the plaintiff's undertaking which was deposited with the Clerk of Courts on June 27, 2005.

Dated at Milwaukee, Wisconsin, this ___ day of September, 2006.

MILWAUKEE COUNTY
CIRCUIT COURT

_____
Judgment Clerk

SUPPLEMENTAL APPENDIX I

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

RONALD W. MORTERS, et al.,

Plaintiffs,

vs.

AIKEN & SCOPTUR, et al.,

Defendants.

ORDER

Case No. 01-CV-004476

(Filed Sept. 13, 2006)

This case comes before the court at the request of the Clerk of Courts for an order authorizing the disbursement of surplus funds held on deposit. On June 22, 2005, I ordered Mr. Morters to deposit with the clerk of court as an undertaking pending appeal the sum of $29,596.83, and I ordered that the sum be increased on a daily basis. On September 7, 2006, I ordered to disburse funds from the sums on deposit.

By this order, I am authorizing the Clerk to return to Mr. Morters the balance of what remains on deposit.

Accordingly, IT IS HEREBY ORDERED THAT the clerk is authorized to return to the person who deposited it the balance of the sums held on deposit in connection with the appeal of this matter, $18,924.35.

/s/ Richard J. Sankovitz
Richard J. Sankovitz
Circuit Court Judge

[SEAL]

Dated: SEP. 13 2006

SUPPLEMENTAL APPENDIX J

WISCONSIN COURT OF APPEALS
OFFICE OF THE CLERK
110 East Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

[SEAL]
Cornelia G. Clark, Clerk

Telephone: (608) 266-1880
TTY: 1-800-947-3529
Fax: (608) 267-0640
www.wicourts.gov

RONALD W. MORTERS
2755 MINOT LANE
WAUKESHA, WI 53188

State of Wisconsin ex rel.
Ronald W. Morters,
Petitioner,
v.
Circuit Court for Milwaukee County, The Honorable Richard J. Sankovitz, presiding,
Aiken & Scoptur, S.C.,
Paul J. Scoptur and
Kelly I. Centofanti,
Respondents.

Date:
September 15, 2006

District: 1
Appeal No.
2006AP002244W
Circuit Court Case No.:
2001CV004476

Acknowledgement of Filing of Writ/Petition

A Petition for Supervisory Writ in the above matter has been filed this date.

Please use the above case name (caption) and case number on all briefs and documents filed in this matter; see Rule 809.81(9). **If you do not agree with the caption, please immediately notify this office in writing.** Thank you.

Cornelia G. Clark
Clerk of Court of Appeals

Distribution:
Court Original
Ronald W. Morters
Michael R. Bauer
A. John Voelker
Paul R. Erickson
Hon. Richard J. Sankovitz
Gregory M. Weber
John Barrett